IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3844 of 1997

Between:

1. The VC & Managing Director APSECCL, Somajiguda, Hyderabad.

2. The Chief Rationing Officer and the then Addl. Managing Driector, APSECCL.

..... PETITIONERS

AND

1. C.V.Viswanatham S/o.Valayudhul, C/o.T.Subhash, Advocate 13-6-512, Tallagadda, PO.Kulsumpura,Hyderabad.

2. The Chairman/Presiding Officer Addl. Industrial Tribunal Cum Addl. Labour Court, 1st Floor, Chandravihar, MJ.Road Opp:Exhibition Grounds, Nampally, Hyderabad.

3. The Govt. of A.P., rep.by its Secretary to Govt. Labour, Employment & Training Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or orders or direction under Art.226 of the Constitution of India and set aside the exparte award in ID.No.264/88, Dt.06/03/95 on the file of the Addl. Industrial Tribunal Cum Labour Court, Hyderabad and consequent notification issued in GO.Rt.No.1186, Labour, Employment and Training (LAB-I) Dept., Dt.23/05/95 and direct the Hon'ble Addl. Industrial Tribunal Cum Labour Court, Hyderabad to dispose of ID.No.264/88 on merits giving an opportunity to APSECCL the petitioner herein and pass such other order.

Counsel for the Petitioner:KUM.C.SINDHU KUMARI for Mr.

S.SATYANARAYANA PRASAD.

Counsel for the Respondent No.1: MR.S.RAVINDRANATH.

Counsel for the RespondentS No.2 AND 3: NONE APPEARED.

The Court made the following :

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 3844 of 1997

O R D E R:

This Writ Petition is filed by the respondents in the Industrial Dispute – I.D.No. 264 of 1988, in which an award was passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, dated 6.3.1995, in favour of the workman.

2. The 1st respondent herein is the workman in the dispute. He was originally working as Bill Writer in the Annapurna Peoples Canteen, located at Mozamjahi Market, Hyderabad, which were being run by the erstwhile A.P. State Essential Commodities Corporation Limited. On certain allegations, disciplinary proceedings were initiated against the 1st respondent workman, and his services were terminated by proceedings dated 29.9.1986 . The said termination was assailed by the 1st respondent-workman before the Labour Court by raising the above Industrial Dispute under Sec.2A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). In the said dispute the petitioner herein remained ex parte, and thereafter the workman was examined, and an award was passed on 22.5.1989, rejecting the claim of the workman on the ground that there was a dispute as to the identity of the workman. The workman assailed the said Award by filing a Writ Petition – W.P.No.16768 of 1989, which was allowed, setting aside the Award, with a direction

to identify the workman, whether he is the workman, whose services were terminated, and decide the matter afresh. The Corporation, in fact, assailed the order of the learned single Judge by filing W.A.No.67 of 1995, which was subsequently dismissed. After remand the matter was once again taken up by the Labour Court. Though the Management filed a counter disputing the claim of the workman, but, however, did not cooperate with the Labour Court. In the absence of the Management, the Tribunal recorded the evidence of the workman and the Management did not even participate in the said proceedings and cross-examine the workman, in spite of several opportunities. Therefore, after examining the evidence of the workman, the evidence was closed on 27.1.1985 and the matter was posted for passing Award. At that stage, the Management filed I.A.No. 42 of 1995 for reopening the matter, which was allowed to give another opportunity to prove the misconduct of the workman by filing the records pertaining to domestic enquiry or leading evidence. Though number of opportunities were given, the Management did not avail the same, and adduce any evidence. In spite of it, the Labour Court posted the matter to 15.2.1995, 23.2.1995, and 1.3.1995, and thereafter the workman recalled himself and gave evidence on 1.3.1995 and also examined two more employees of the Management-Corporation as WWs. 2 & 3, as to his identity. As the Management did not adduce any evidence, the Labour Court was compelled to pass award on merits. Considering the material on record, the Labour Court gave a finding that the 1st respondent herein is the workman, whose services were terminated by the Management. With reference to the second issue as to the relief to which the workman is entitled, as the Corporation failed to file the records pertaining to the domestic enquiry to prove the misconduct alleged to have been committed by the workman, nor did it adduce any evidence in support of its claim, the Labour Court accepted the claim of the workman, and ordered reinstatement, but, however, without any back wages. The said award was passed on 6th March 1995. Aggrieved by that, the successor Corporation – Management filed the Writ Petition, but without properly amending the cause title, showing the predecessor Corporation as the writ petitioner, though the Vakalat on behalf of the Management was signed by the Vice-

Chairman and Managing Director of the A.P. State Civil Supplies Corporation, the successor.

3. This Writ Petition is filed in the year 1997. In the Writ Petition the explanation of the Corporation-Management is that after winding up of the erstwhile State Essential Commodities Corporation Limited, the files were transferred to A.P. State Civil Supplies Corporation in July 1995. Thereafter, the file concerning this case got mixed up with other records. Further, according to the petitioner-management, there were two cyclones in the year 1996, and as the Corporation was solely and totally responsible for the implementation of Rs.2-00 a KG Rice scheme, all its energies and time were diverted to meet the emergency situation to look after the public distribution of rice and therefore, the file could be searched and traced only in February 1997, and hence the Writ Petition was filed in 1997, and therefore, it is contended that there are no laches on the part of the Corporation.

4. Even on merits, the learned senior counsel appearing for the Corporation contended that as there was a regular domestic enquiry conducted with reference to misconduct committed by the workman, which resulted in giving findings against the workman as having been found guilty of the charges, the orders of termination were passed. Therefore, there is no illegality or irregularity on the part of the Management in terminating the services of the workman. Hence, the learned counsel sought to set aside the impugned order in order to give the Corporation an opportunity to adduce evidence before the Labour Court, so as to prove its case. Alternatively, the learned counsel also contended that this Court itself can look into the merits of the contentions advanced by the Corporation so as to decide the claims of the rival parties on merits. Therefore, the learned counsel sought for appropriate orders.

5. The learned counsel Sri S. Ravindranath, appearing for the workman contended that the erstwhile Corporation as well as the successor Corporation were not at all cooperative to adjudicate upon the dispute raised by the workman. According to the learned counsel, certain charges were made against the workman. Though an enquiry was said to have been conducted by an enquiry officer, appointed by the Corporation, the workman was neither served a copy of the enquiry report nor given

any opportunity to submit his explanation against the findings of the enquiry officer. The workman was simply served with an order of termination. Therefore, the workman was constrained to approach the Labour Court, as he was not aware of the findings on which his services were terminated. The conduct of the Corporation was not cooperative even before the Labour Court. In the first round, the Corporation remained ex parte, but however, the Labour Court dismissed the claim of the workman on the ground that there is some variation with reference to the name of the workman in the dispute and in the order of termination passed by the Corporation. But, however, even after the said award was set aside by this Court, and remanded for fresh consideration including the identity of the workman, though the workman has adduced evidence, the Corporation did not even bother to cross-examine the workman or his witnesses, nor did it take any steps to file the relevant records of the enquiry conducted by the Corporation, nor did it adduce any evidence with reference to the alleged misconduct of the workman. In the absence of any such evidence by the Management, as the evidence of the workman remained

un-rebutted, the Labour Court, on appreciation of the evidence adduced by the workman, passed the Award not only with reference to the identify of the workman, but also granting order of reinstatement. The learned counsel also contended that though the said award passed as early as on 6.3.1995, the successor Corporation did not bother to implement the said award, nor even assailed the same till 1996 when the workman moved the Labour Court by filing an application in M.P.No.47 of 1996 for ascertaining the benefits of the Award to which he is entitled. In the said petition, the Labour Court ordered notice in the month of November 1996 fixing the date for filing counter as 7.12.1996. It is only thereafter the Corporation has come up with the present Writ Petition, nearly after two years from the date of the Award passed by the Labour Court. The learned counsel for the workman contended that the writ petition is liable to be dismissed on the ground of laches, as the Writ Petition was not filed within the reasonable time from the date of the Award. Even on merits also the learned counsel also contended that the Corporation did not bother either to adduce evidence or to file the records with reference to the domestic enquiry

conducted by it to prove its case. When no such evidence was adduced, the Labour Court was left with no other alternate except to pass the Award, basing on the evidence adduced by the workman. It is contended that the order of termination was passed on as early as on 29.9.1986 and though an award was passed in favour of the workman on 6.3.1995, the management neither took the workman into service nor even paid the wages contemplated under Sec.17-B of the Act. Even after the order was passed by this Court in an application filed by the workman on 6.4.2004 till a contempt case was filed by the petitioner in September 2004, the Corporation did not bother to pay the wages, payable under Sec.17-B of the Act. Even before this Court also the matter was adjourned as many as 22 items and ultimately when contempt case is filed, the petitioner counsel appeared and argued the case. Therefore, there is absolutely no merit in the present writ petition filed by the Corporation, and therefore, the learned counsel sought to dismiss the same.

6. From the above rival contentions, the issue to be considered is whether there are merits in the present writ petition filed by the Management, warranting interference with the Award of the Labour Court.

7. As already stated the order of termination was passed in the year 1986. Thought it is stated that the said order was preceded by a regular departmental enquiry, but, the grievance of the workman is that he was neither supplied the enquiry report nor was given an opportunity to show cause or to explain before an order of termination was passed. Therefore, he assailed the said order of termination. Before the Labour Court, the Corporation had shown its deaf ear through out the proceedings by remaining ex parte in the first round of litigation and thereafter when the matter was remitted for fresh consideration, though a counter was filed and an Advocate was appeared, there is no change in its attitude, as it did not participate in the enquiry at all and did not bother to cross-examine the witnesses examined on behalf of the workman, nor it produced its evidence including the proceedings of the domestic enquiry. The conduct of the Corporation clearly shows that it was least bothered about the proceedings pending before the Labour Court. The Labour Court,

therefore, on merits found that the claimant is the workman, whose services were terminated, and further in the absence of any evidence adduced by the Corporation so as to justify the termination of the services of the workman, the Labour Court set aside the order of termination and ordered reinstatement. A perusal of the award of the Labour Court clearly shows that even in the second round of litigation, once the evidence was closed on 27.1.1995 and the same was reopened on an application i.e., I.A.No.42 of 1995 filed by the Corporation. But even then the Corporation did not move its little finger for filing the records pertaining to the domestic enquiry or to lead evidence about the misconduct of the workman. The Labour Court repeatedly adjourned the matter, so as to give the Corporation an opportunity to lead evidence, but as there was no positive action on the part of the Management, the Labour Court closed the matter and passed the award on merits. The said award was not implemented till 1996. Therefore, the workman filed an application under Sec.33-C(2) of the Act in M.P.No.47 of 1996, seeking to grant the benefits of the Award. When a notice was ordered, fixing the date to 7.12.1996, then only the Corporation moved and filed the present Writ Petition, nearly after two years from the date of the Award.

8. In the affidavit filed in support of the writ petition, the Corporation has come up with a lengthy explanation saying that the erstwhile State Essential Commodities Corporation was wound up, and thereafter the files were transferred to the successor Corporation – A.P. State Civil Supplies Corporation and the file pertaining to the workman was mixed up with other files, which could not be traced till 1997, and in between there were two cyclones, due to which the Corporation was compelled to meet the said emergency situation. Therefore, it could not file the Writ Petition immediately or within a reasonable time. Therefore, the learned counsel contended that in order to do justice the impugned award has to be set aside or this Court has to go into the merits of the matter looking into the material pertaining to the domestic enquiry. As already noticed, the conduct of the Corporation from the beginning of the proceedings before the Labour Court is not cooperative and the Corporation did not bother to do its part to justify its action. The Corporation also did not bother even to

file the impugned award while filing the Writ Petition, but only filed the Award passed in the earlier round of litigation, which was set aside by this Court. Now even after 18 years of the termination, the workman is moving from pillar to post to seek redressal. The conduct of the Corporation not only during the pendency of the proceedings before the Labour Court, but also in filing the Writ Petition with a delay of nearly two years does not warrant any indulgence to be shown by this Court. If any indulgence is shown, it would further aggravate the suffering of the workman, who has been moving from pillar to post for all these 18 years.

9. Under the above circumstances, the Writ Petition is devoid of merit, and the same is accordingly dismissed, but without costs.

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S. Ananda Reddy, J.

Dt. 14.10.2004

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To

1. The Chairman/Presidng Officer, Additional Industrial Tribunal-cum-Additional Labour Court, 1st Floor, Chandravihar, M.J.Road, Opp.Exhibition Grounds, Nampally, Hyderabad.
2. The Secretary to Government, Labour, Employment & Training Secretariat, Hyderabad.
3. Two CD copies.